



## Integrating Fiqhiyyah Legal Maxims and Positive Law Principles in the Formation of Indonesia's New National Criminal Code

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**Abstract:** Although Indonesia is not formally constituted as an Islamic state, Islamic legal values have significantly influenced the development of its national legal system, particularly in the formation of modern legislation. This study aims to examine the integration of *fiqhiyyah* legal maxims into the foundational principles of Law No. 1, 2023 concerning Indonesia's New National Criminal Code (KUHP). Employing a qualitative approach grounded in normative juridical methods, this research draws upon primary legal documents, classical fiqh literature, and contemporary legal scholarship. Data were collected through a systematic literature review and analysed using conceptual and statutory approaches to identify patterns of normative convergence and doctrinal alignment. The findings indicate that at least eight *fiqhiyyah* legal maxims are substantively embedded within the core principles of the KUHP. Notably, the maxim *la jarimata wa la 'uqubata illa bi al-nass* corresponds to the principle of legality as stipulated in Articles 1(1) and 2(1). The principle of non-retroactivity is reflected in *la raj'iyyah fi al-tashri' al-jina'i*, while the doctrine of limited retroactivity aligns with *inna al-tashri' al-jina'i yajuzu an yakuna labu atharun raji'un* as reflected in Article 3(1). Furthermore, the maxim *inna al-shari'ah al-islamiyyah tutabbaqu' ala kulli jarimah* underpins the principles of active and passive nationality in Articles 5 and 8. This study contributes to the discourse on legal pluralism by demonstrating that Indonesia's criminal law reform embodies a substantive harmonisation between positive Law and Islamic legal reasoning. It highlights the epistemological relevance of *fiqhiyyah* maxims as a normative bridge in shaping a responsive, adaptive, and contextually grounded modern legal system in a pluralistic society.

**Keywords:** Criminal Code; Fiqhiyyah Legal Maxims; Islamic Law; Legal Harmonization.



## Introduction

Legal principles constitute the fundamental foundations that guide the formation, application, and interpretation of law within a state, while simultaneously upholding morality and justice within the legal order.<sup>1</sup> From a theoretical perspective, legal principles are not merely abstract norms but reflections of the ethical values embedded in society.<sup>2</sup> Paul Scholten, as cited by Rokilah and Sulasno, emphasises that legal principles embody the moral tendencies inherent in law and function as consistent interpretative guidelines.<sup>3</sup> This view aligns with Lon L. Fuller's perspective in *The Morality of Law*, which asserts that legal principles maintain the coherence and rationality of the legal system, thereby preventing uncertainty and arbitrariness in legal practice.<sup>4</sup> In Indonesia, these principles are firmly rooted in Pancasila as the foundational source of values underpinning the national legal system.<sup>5</sup>

A major transformation in Indonesia's legal system is marked by the enactment of Law Number 1 of 2023 concerning the Criminal Code (KUHP) on 6 January 2026.<sup>6</sup> This enactment represents a pivotal milestone, bringing an end to more than seven decades of reliance on the Dutch colonial Criminal Code. The new Criminal Code is designed not merely as a formal legal instrument but as a reflection of Indonesia's identity, incorporating indigenous, customary, and religious values.<sup>7</sup> One of its most significant features is the integration of Islamic legal values, particularly fiqhiyyah legal maxims, into the framework of national criminal law. This integration demonstrates a deliberate effort to construct a legal system that is not only formally valid but also morally grounded and contextually relevant to a predominantly Muslim society.<sup>8</sup>

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<sup>1</sup> Taufiq Shobri et al., 'Legal Framework for Addressing Cybercrime Threats in Strengthening Indonesia's National Defense and Security', *Trunojoyo Law Review* 8, no. 2 (April 2026): 178–203, <https://doi.org/10.21107/tr.v8i2.33492>.

<sup>2</sup> D. Djumikasih, 'Model Pencantuman Asas Hukum Dalam Pembentukan Hukum Perikatan Nasional', *Jurnal Hukum & Pembangunan* 52, no. 3 (2022): 768–80, <https://doi.org/10.21143/jhp.vol52.no3.3374>.

<sup>3</sup> Rokilah and Sulasno, 'Penerapan Asas Hukum Dalam Pembentukan Peraturan Perundang-Undangan', *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 179–90, <https://doi.org/10.30656/ajudikasi.v5i2.3942>.

<sup>4</sup> Lon L. Fuller, *The Morality of Law* (New Heaven: Con, 1969).

<sup>5</sup> Fais Yonas Bo'a, 'Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional', *Jurnal Konstitusi* 15, no. 1 (2018): 477–85, <https://doi.org/10.57235/jerumi.v2i1.2007>.

<sup>6</sup> Humas UIR, 'RKUHP Resmi Disahkan, Berikut Pasal Yang Menjadi Perdebatan Publik', 2023, <https://uir.ac.id/rkuhp-resmi-di-sahkan-berikut-pasal-yang-menjadi-perdebatan-publik.html>.

<sup>7</sup> Junaidi Abdillah and Suryani, 'Model Transformasi Fiqh Jinâyah Ke Dalam Hukum Pidana Nasional (Kritik Nazhariyat al-'Uqûbah Terhadap Materi KUHP)', *Masalah-Masalah Hukum* 47, no. 2 (2018): 98–110.

<sup>8</sup> Topo Santoso, *Asas-Asas Hukum Pidana* (Depok: RajaGrafindo Persada, 2023).

Nevertheless, the integration of fiqhiyyah legal maxims into the new Criminal Code raises unresolved conceptual issues, particularly regarding the notion of harmonisation between Islamic law and national law. The term “harmonisation” is frequently invoked in academic and policy discourse, yet it often lacks conceptual clarity.<sup>9</sup> A fundamental question arises as to whether harmonisation is understood as the direct adoption of fiqh principles into positive law, their adaptation through contextual reinterpretation, or merely their legitimisation within the national legal framework.<sup>10</sup> Each of these approaches carries distinct implications. Adoption may generate tensions with constitutional principles, such as equality before the law and freedom of religion.<sup>11</sup> Adaptation requires methodological reconstruction to ensure alignment with Indonesia’s legal pluralism, including customary law traditions.<sup>12</sup> Meanwhile, legitimisation risks reducing the integration to a symbolic gesture without substantive impact on legal practice. Therefore, the central problem of this study lies in the absence of a clear conceptual framework for understanding the model of harmonisation applied in integrating fiqhiyyah legal maxims into the Criminal Code.<sup>13</sup>

Fiqhiyyah legal maxims, as an integral component of Islamic legal scholarship, offer a set of universal principles that are highly relevant to the development of just legal systems. Maxims such as *lā jarimah wa lā ‘uqūbah illā bi al-naṣṣ* (no crime and no punishment without legal basis), *lā rajī‘yyah fī al-tasbīrī‘ al-jīmā‘ī* (non-retroactivity in criminal law), and the principle of caution in the application of hudud punishments reflect strong parallels with modern criminal law principles, including legality and the protection of human rights. Furthermore, the maxim *dar’ al-mafāsīd muqaddam ‘alā jalb al-maṣāliḥ* (preventing harm takes precedence over obtaining benefit) provides normative guidance in balancing societal protection with individual rights.<sup>14</sup> These principles demonstrate that fiqhiyyah maxims are not only historically significant but also contextually relevant in

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<sup>9</sup> Sahat Maruli Tua Situmeang et al., ‘Contemporary Human Rights Safeguards in Islamic Law Justice: A Comparative Study in Indonesia, Saudi Arabia, and Egypt’, *MILRev: Metro Islamic Law Review* 5, no. 1 (April 2026): 575–610, <https://doi.org/10.32332/7qqs8b94>.

<sup>10</sup> ‘Contesting Sharia and Human Rights in the Digital Sphere: Media Representations of the Caning Controversy under the Qanun Jinayat in Aceh’, accessed 29 April 2026, <https://e-journal.iainptk.ac.id/index.php/jil/article/view/3600>.

<sup>11</sup> Abdul Hafiz and Muhammad Zuhdi, ‘Konsep Hubungan Agama Dan Negara Dalam Kehidupan Masyarakat’, *Rayah Al-Islam* 8, no. 1 (2024): 94–105, <https://doi.org/10.37274/rais.v8i1.913>.

<sup>12</sup> Milthree Geofani Saragih and Viona Margaretha, ‘Eksistensi Hukum Islam Dalam Paradigma Sistem Hukum Pancasila Di Indonesia’, *Jurnal Esensi Hukum* 4, no. 2 (2022): 139–53.

<sup>13</sup> Deni Nuryadi, ‘Teori Hukum Progresif Dan Penerapannya Di Indonesia’, *Jurnal Ilmiah Hukum De Jure: Kajian Ilmiah Hukum* 1, no. 2 (2016): 394–408.

<sup>14</sup> Utpy Asifae et al., ‘Penerapan Kaidah Fiqhiyyah Terhadap Kejahatan Siber Dalam Hukum Jinayah’, *Syariah: Jurnal Ilmu Hukum* 2, no. 1 (2024): 134–39.

addressing contemporary legal challenges, including technologically driven crimes and the evolving dynamics of global legal systems.

Despite their relevance, studies on the integration of fiqhiyyah legal maxims into Indonesia's public law—particularly criminal law—remain limited. Existing scholarship has predominantly focused on private law domains, such as family law and Islamic finance. Several relevant studies can be identified. First, research on the implementation of Islamic criminal law in Aceh highlights the contribution of Islamic law to criminal law reform through the practice of caning punishment.<sup>15</sup> However, this study is limited to a local context and does not address integration at the national level. Second, studies examining the evolution of Islamic law from the colonial era to its incorporation into the national legal system provide valuable historical insights but do not specifically engage with the recent development of the 2023 Criminal Code.<sup>16</sup> Third, research on the role of Islamic law in promoting good governance based on public welfare (*maslahah*) offers a strong normative perspective. However, it does not sufficiently elaborate on the operational role of fiqhiyyah legal maxims in shaping positive criminal law.<sup>17</sup>

These studies reveal a significant research gap. To date, there has been no comprehensive and systematic analysis of how fiqhiyyah legal maxims are integrated into Law Number 1 of 2023 within a clear framework of harmonisation with positive legal principles. Moreover, there is a lack of methodological clarity regarding the form of harmonisation employed and its implications for Indonesia's pluralistic legal system. In response to this gap, this study offers three main contributions. First, it develops a conceptual framework of harmonisation that clearly distinguishes between adoption, adaptation, and legitimisation in the integration of Islamic legal principles. Second, it focuses specifically on the 2023 Criminal Code as its object of analysis, a subject that remains underexplored in current literature. Third, it positions fiqhiyyah legal maxims not merely as normative references but as operational tools that can be implemented in contemporary legal practice.

Based on the foregoing discussion, this study addresses the following research question: How are fiqhiyyah legal maxims harmonised with positive legal principles in the formation of Law Number 1 of 2023 concerning the Criminal

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<sup>15</sup> Dwiwana Achmad Hartanto, 'Kontribusi Hukum Islam Dalam Pembaharuan Hukum Pidana Di Indonesia (Studi Pidana Cambuk Di Nanggroe Aceh Darussalam)', *Al-Abkam Jurnal Ilmu Syari'ah Dan Hukum* 1, no. 2 (2016): 171–92, <https://doi.org/10.22515/alahkam.v2i2.147>.

<sup>16</sup> Dahlia Haliah Ma'u, 'Eksistensi Hukum Islam Di Indonesia (Analisis Kontribusi Dan Pembaruan Hukum Islam Pra Dan Pasca Kemerdekaan Republik Indonesia)', *Jurnal Ilmiah Al-Syir'ah* 15, no. 1 (2018): 14–30, <https://doi.org/10.30984/as.v15i1.471>.

<sup>17</sup> M. Hasan Ubaidillah, 'Kontribusi Hukum Islam Dalam Mewujudkan Good Governance Di Indonesia', *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 11, no. 1 Juni (2008): 112–41.

Code, and what are the implications of this harmonisation for Indonesia's national legal system? This study holds both theoretical and practical significance. Theoretically, it contributes to the development of contemporary Islamic legal studies, particularly in understanding the relationship between Islamic law and national law within the framework of a modern state. It also enriches the discourse on legal pluralism and the integration of religious values into a secular legal system. Practically, the findings of this study are expected to serve as a reference for policymakers, legal scholars, and law enforcement officials in interpreting and implementing fiqhiyyah legal maxims within the Criminal Code in a balanced and contextually appropriate manner. Furthermore, this study aims to minimise potential interpretative conflicts and ensure that the integration of Islamic values into national law remains aligned with the principles of justice, legal certainty, and respect for Indonesia's diverse society.

## Method

This study employs a qualitative approach using normative juridical research methods to examine the integration of fiqhiyyah legal maxims with positive legal principles in the formulation of Law No. 1, 2023 concerning Indonesia's New National Criminal Code (KUHP). The research focuses on exploring how Islamic legal maxims, particularly within *fiqh al-jinayah* (Islamic criminal law), are contextualised within Indonesia's pluralistic and Pancasila-based legal framework. This approach enables a comprehensive analysis of both textual and contextual dimensions of law by examining statutory regulations, codified legal norms, and doctrinal developments in classical and contemporary fiqh. Data collection is conducted through a systematic library research method, drawing on primary legal sources such as the KUHP and recognised fiqhiyyah maxims, as well as secondary sources including peer-reviewed journal articles, authoritative Islamic legal texts, and relevant academic publications addressing the intersection of Islamic and positive law.

The data are analysed using qualitative content analysis to identify patterns of normative alignment between fiqhiyyah legal maxims and fundamental principles of criminal law, such as legality, non-retroactivity, presumption of innocence, and the prohibition of analogy. This analytical technique facilitates an in-depth evaluation of the extent to which Islamic legal doctrines correspond with or complement Indonesia's statutory legal framework. To ensure the validity and reliability of the findings, this study applies source triangulation by cross-referencing classical fiqh doctrines with statutory provisions and contemporary legal interpretations. Additionally, an interpretative and argumentative approach is employed to strengthen analytical rigor and provide a systematic explanation of how fiqhiyyah maxims can be operationalised within modern legal structures. Through this method, the study offers a nuanced understanding of the role of Islamic legal reasoning in shaping a responsive, context-sensitive, and pluralistic national criminal law system.

## Results and Discussion

### Background to The Enactment of Law No. 1, 2023; From Colonial to National Laws

The passing of Law No. 1, 2023 on the Criminal Code (KUHP) marks a major milestone in Indonesia's legal history, replacing the Dutch colonial Criminal Code after 104 years. The formulation of this law took 60 years, starting from 1963 until it was passed at a plenary meeting of the Indonesian Parliament on 6 December 2022. President Jokowi signed the law on 2 January 2023, which will become effective in 2026 after a three-year transition period.<sup>18</sup> The new Law No. 1, 2023 consists of 37 chapters, 624 articles, and 345 pages, divided into Book One and Book Two. Book One contains general principles, while Book Two includes specific principles on criminal offences.<sup>19</sup>

This law reflects the neo-classical school of criminal law philosophy that pays attention to the balance between the criminal act (objective factors) and the aspect of the perpetrator (subjective factors), in contrast to the classical school in the old Criminal Code. In addition, Law No. 1 of 2023 is influenced by victimology, paying special attention to victims of crime and abuse of power. The formulation of this new criminal law includes unlawful acts, criminal liability, and applicable sanctions<sup>20</sup>. Socialisation measures, module development, and the drafting of implementing regulations are the focus of the government in the transition period to prepare for the implementation of Law No. 1, 2023<sup>21</sup>.

The replacement of the colonial Criminal Code is based on political, sociological, and practical reasons. Politically, Law No. 1, 2023 symbolises Indonesia's legal sovereignty. Sociologically, the old Criminal Code is not in accordance with Indonesian cultural values based on togetherness. Practically, the Dutch language in the old Criminal Code often led to multiple interpretations, resulting in legal uncertainty<sup>22</sup>. According to Prof Muladi, the national Criminal Code not only considers these reasons but is also designed within the framework of the national ideology of Pancasila to reflect the projection of future criminal law that is relevant and just.<sup>23</sup>

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<sup>18</sup> 'UU 1/2023: Kitab Undang-Undang Hukum Pidana (KUHP)', JDIIH Marves, 2023.

<sup>19</sup> 'Berlaku Tiga Tahun Lagi, KUHP Bukan Untuk Lindungi Presiden', InfoPublik Panrb, 2023, <https://www.menpan.go.id/site/berita-terkini/berita-daerah/berlaku-tiga-tahun-lagi-kuhp-bukan-untuk-lindungi-presiden>.

<sup>20</sup> 'https://Www.Jogloabang.Com/Pustaka/Uu-1-2023-Kuhp-Buku-Kesatu'.

<sup>21</sup> '3 Langkah Kemenkumham Untuk Menyosialisasikan KUHP Baru', Suara Manado, 2023, <https://online.suaramanado.com/3-langkah-kemenkumham-untuk-menyosialisasikan-kuhp-baru/>.

<sup>22</sup> Sudarto, *Hukum Pidana Dan Perkembangan Masyarakat* (Bandung: Sinar Baru, 1983).

<sup>23</sup> Muladi, *Proyeksi Hukum Pidana Materiil Dimasa Yang Akan Datang, Teks Pidato Pidato Pengukuhan Guru Besar Ilmu Hukum UNDIP* (Semarang, 1990).

### Fiqhiyah legal maxim that relates to the legal principles in law no. 1, 2023

*Fiqhiyah legal maxims* are principles that contain universal *fiqh* provisions that contain general sharia laws in various *fiqh* chapters about events that fall within their scope. In the context of Law No. 1, 2023 concerning the Criminal Code, these *fiqhiyah legal maxims* are called *fiqhiyah jinayah* principles. The principles of *fiqhiyah jinayah* are principles in Islamic Law that discuss ways to maintain and protect the rights of Allah SWT, community rights, and individual rights from actions that are not justified according to Islam.<sup>24</sup> Its scope involves discussions related to crimes such as murder, whether intentional or not, with details of the pillars and conditions, as well as aspects of proof through witnesses.<sup>25</sup> In addition, the scope of this principle includes other criminal acts such as maltreatment and adultery, as well as sanctions that are relevant to the proof<sup>26</sup>.

In relation to the legal principles in Law No. 1, 2023, there are several *fiqhiyah legal maxims* relating to the principles of positive law in criminal law, namely:

#### 1. Principle لَا جُرْمَةَ وَلَا عُقُوبَةَ إِلَّا بِالنَّصِّ

Islamic Law has long recognised the principle of legality, as reflected in the principle لَا جُرْمَةَ وَلَا عُقُوبَةَ إِلَّا بِالنَّصِّ, asserting that an individual can only be held criminally liable if Sharia explicitly prohibits their actions through the Qur'an, Hadith, or other legal sources.<sup>27</sup> For instance, theft is clearly classified as a criminal offence in Surah Al-Maidah (5:38), warranting hudud punishment under certain conditions. Conversely, acts without a clear textual basis cannot be subjected to criminal sanctions, such as the use of modern technologies, unless proven to violate Sharia principles or cause real harm.

#### 2. Principle لَا رَجْعِيَّةَ فِي التَّشْرِيعِ الْجِنَائِيِّ

The principle means that any criminal principles made later cannot ensnare criminal acts committed before the principles were made. Examples such as marrying one's father's ex-wife (an-Nisa: 22), marrying two sisters at the same time (an-Nisa: 23), consuming usury (al-Baqarah: 275), and hunting while in ihram (al-Maidah: 95) are acts that were permissible before the verses came. Acts committed before the arrival of the prohibiting verse cannot be sanctioned, but rather forgiven. Therefore, principles that

<sup>24</sup> Situmeang et al., 'Contemporary Human Rights Safeguards in Islamic Law Justice'.

<sup>25</sup> Yevhen Leheza et al., 'Interpretation of Regulatory and Legal Acts in Contemporary Contexts: Foreign Experience, Comparative Perspectives, and Pathways for Regulatory Reform', *Nusantara: Journal of Law Studies* 5, no. 1 (February 2026): 102–22, <https://doi.org/10.5281/zenodo.18727992>.

<sup>26</sup> Ahmad Musadad and Mustaniroh, *Intisari Kaidah Fiqh Komprehensif*, cet. ke-1 (Batu: Literasi Nusantara, 2020).

<sup>27</sup> Jaih Mubarak and Enceng Arif Faizal, *Kaidah Fiqh Jinayah (Asas-Asas Hukum Pidana Islam)*, cet. Ke-1 (Bandung: Pustaka Bani Quraisy, 2004).

come later cannot ensnare acts categorised as jarimah by the principle, which were committed before the principle came<sup>28</sup>.

3. *Principle* إِنَّ التَّشْرِيْعَ الْجَنْائِيَّ يُجْزُو أَنْ يَكُوْنَ لَهُ أَنْتَرٌ رَجْعِيٌّ فِي حَالَةِ الْجَرَائِمِ الْخَطِيْرَةِ الَّتِي تَمَسُّ الْأَمْنَ الْعَامَّ أَوْ التَّنْظَامَ الْعَامَّ<sup>29</sup>

This principle is based on the Prophet's action when giving punishment to a group of Uyainah who committed an act of robbery and murder of a companion of the Prophet. This incident occurred before the revelation of the verse related to the punishment for robbery (al-Ma'idah: 33). The punishment meted out involved retribution for a very dangerous criminal act, even though the verse had not been revealed at the time of the act. The Prophet's action demonstrates the importance of security, stability and maintaining public order as part of the *maqashid Sharia* (the purpose of Islamic Law)<sup>29</sup>.

4. *Principle* إِنَّ التَّشْرِيْعَ الْجَنْائِيَّ يَجِبُ أَنْ يَكُوْنَ لَهُ أَنْتَرٌ رَجْعِيٌّ كُلَّمَا كَانَ ذَلِكَ فِي مَصْلَحَةِ الْجَانِي

This principle is grounded in the Prophet's application of a later, more favourable text (QS. al-Mujadalah: 1–4) to a case<sup>30</sup>, affirming the principle of justice in Islamic criminal Law that retroactive enforcement (*atsar raj'i*) is permissible if it benefits or mitigates the punishment for the offender (*al-jami*). It demonstrates that Islamic criminal policy is not purely repressive but accommodates substantive justice, particularly when new legislation results in lighter or abolished penalties. This principle aligns with the concept of *rahmatan lil' alamin*, where law enforcement should avoid injustice and prioritise societal welfare.

5. *Principle* إِنَّ الشَّرِيْعَةَ الْإِسْلَامِيَّةَ تُطَبَّقُ عَلَى كُلِّ جَرِيْمَةٍ تُرْتَكَبُ فِي أَيِّ مَكَانٍ سَوَاءً كَانَ مُرْتَكِبُ الْجَرِيْمَةِ مُسْلِمًا أَوْ ذِمِّيًّا أَوْ مُسْتَأْمِنًا

This principle affirms that Islamic criminal Law universally applies to all criminal offences, regardless of location, country, religion, or nationality of the perpetrator, whether Muslim, *dzimmi*, or *musta'min*. Islamic Law is not confined to the territory of Islamic states but covers any individual whose act violates Sharia, even outside Muslim-majority countries. The universality principle reflects Islamic Law's role in safeguarding security and public order, ensuring that every offence receives appropriate legal sanctions, as mirrored in Indonesia's positive legal system.<sup>31</sup>

6. *Principle* الْحُدُودُ تَسْقُطُ بِالشُّبُهَاتِ

This principle derives from the fundamental principles of Islamic criminal law, which stipulate that the application of hadd punishments (such as hand-cutting, stoning, or flogging) must be based on full conviction without any doubt (*shubhat*). If any doubt exists, the hadd penalty cannot be enforced, as reflected in the Prophet's hadith: "Avoid applying hudud in the presence of doubt." This principle demonstrates

<sup>28</sup> Mubarok and Enceng Arif Faizal.

<sup>29</sup> Mubarok and Enceng Arif Faizal.

<sup>30</sup> Mubarok and Enceng Arif Faizal.

<sup>31</sup> Mubarok and Enceng Arif Faizal.

Islam's caution in imposing severe punishments, prioritising justice and forgiveness, and aligns with the *maqāṣid al-sharī'ah* objective of protecting life, dignity, and individual security<sup>32</sup>.

7. *Principle لا يَجُوزُ اثْبَاتُ الْحُقُوقِ الشَّرْعِيَّةِ بِالْقِيَاسِ إِذَا كَانَتْ مُحَدَّدَةً بِالنَّصِّ*

This principle states that rights that have been clearly determined in the Shari'ah through the nash (Qur'an and hadith) cannot be changed, added to, or adjusted through the method of qiyas (analogy). This is because the rights determined by the nash are either *ta'abbudi* (directly related to Allah's commands that cannot be fully rationalised) or *ta'yn* (predetermined by the Shariah)<sup>33</sup>. In the context of Islamic Law, the nash serves as the main basis for establishing principles, especially in matters of worship, hudud, and certain obligations. Qiyas is only used in cases that do not have a specific nash or are general in nature.

8. *Principle أَلْعُقُوبَاتُ تَدُورُ مَعَ الْجَرَائِمِ وَجُودًا وَعَدَمًا*

This principle explains the basic principle in Islamic Law that the existence of punishment or sanction (*uqubat*) depends on the presence or absence of a criminal offence (*jarimah*). In other words, there is no punishment without a criminal offence. If the criminal offence has been proven, then the punishment can be applied. However, if the criminal offence is not proven, the punishment cannot be automatically applied.<sup>34</sup> This principle confirms the principle of legality in Islamic criminal Law, which prohibits the imposition of punishment in the absence of concrete evidence of unlawful conduct. This principle provides protection for justice and ensures that a person is only punished based on proven offences.

The following is a data table of fiqhiyyah legal maxim containing principles in positive law in the criminal field:

Table 1. List of Fiqh Principles of Criminal Law

No	Fiqhiyyah legal maxim	Meaning
1	لَا جَرِيْمَةَ وَلَا عُقُوبَةَ إِلَّا بِالنَّصِّ	There is no jarimah (criminal offence) and no punishment before the nash.
2	لَا رَجْعِيَّةٌ فِي التَّشْرِيعِ الْجِنَايِيِّ	Criminal principles are not retroactive
3	إِنَّ التَّشْرِيعَ الْجِنَايِيِّ يَجُوزُ أَنْ يَكُونَ لَهُ أَثَرٌ رَجْعِيٌّ فِي حَالَةِ الْجَرَائِمِ الْخَطِيْرَةِ الَّتِي تَمَسُّ الْأَمْنَ الْعَامَّ أَوْ النِّظَامَ الْعَامَّ	Islamic criminal law may apply retroactively to extremely dangerous offences related to security or public order

<sup>32</sup> Mubarak and Enceng Arif Faizal.

<sup>33</sup> Nita Risnawati, 'Upaya Pemabrantasan Korupsi (Studi Komparatif Tentang Kinerja Lembaga Anti Korupsi Di Indonesia Dan Malaysia Tahun 2013 Dan 2014)' (Universitas Islam Negeri Syarif Hidayatullah, 2016).

<sup>34</sup> Zulhamdi, 'Konsep Pertanggungjawaban Pidana Dalam Fiqh Jinayah', *Syarah: Jurnal Hukum Islam* 9, no. 1 (2020): 12–26.

4	إِنَّ التَّشْرِيعَ الْجِنَائِيَّ يَجِبُ أَنْ يَكُونَ لَهُ أَثَرٌ رَجْعِيٌّ كُلَّمَا كَانَ ذَلِكَ فِي مَصْلَحَةِ الْجَانِي	Criminal law can be applied retroactively if it is for the good of the defendant.
5	إِنَّ الشَّرِيعَةَ الْإِسْلَامِيَّةَ تُطَبَّقُ عَلَى كُلِّ جَرِيمَةٍ تُرْتَكَبُ فِي أَيِّ مَكَانٍ سَوَاءً كَانَ مُرْتَكِبُ الْجَرِيمَةِ مُسْلِمًا أَوْ ذِمِّيًّا أَوْ مُسْتَأْمِنًا	Indeed, Islamic Law applies to every crime committed in any place, regardless of whether the perpetrator of the crime is a Muslim, a dhimmi (a non-Muslim living under Islamic principles with certain protections), or a musta'min (a non-Muslim who has been granted temporary protection or a safe-conduct).
6	الْحُدُودُ تَسْقُطُ بِالشُّبُهَاتِ	Hudud punishment is waived because of shubhat.
7	لَا يَجُوزُ اثْبَاتُ الْحُقُوقِ الشَّرْعِيَّةِ بِالْقِيَاسِ إِذَا كَانَتْ مُحَدَّدَةً بِالنَّصِّ	It is not permissible to determine shar'i rights by qiyas if nash has clearly determined them
8	الْعُقُوبَاتُ تَدُورُ مَعَ الْجَرَائِمِ وَجُودًا وَعَدَمًا	Punishment revolves around the crime, its presence or absence depending on the existence of the crime itself.

Source: author's interpretation

### The Integration of *Fiqhiyyah Legal Maxim* with Legal Principles in the Formation of Law No. 1, 2023

The formation of criminal law in the legislative system not only illustrates social, political, and cultural dynamics<sup>35</sup> but also shows the influence of philosophical and religious values that develop in society.<sup>36</sup> In the Indonesian context, Islamic Law, including its criminal law, has a significant contribution to the formation of national law.<sup>37</sup> Bustanul Arifin, in his paper entitled 'Straightening the Perception of Sharia is a Requirement for Sharia as the Basis of Indonesian Legal Science,' asserts that the legislative process, such as in the Marriage Law, Religious Courts, Juvenile Courts, and Regional Autonomy, has successfully integrated Islamic values through the efforts of Muslim scholars and ulama. This not only proves the role of Sharia (Islamic Law) in building national law but also dismisses prejudice against religion, showing that Sharia contains *rahmatan lil' alamin* values. With a clear theological philosophy, Sharia is able to answer the challenges of cultural and scientific developments and make a major

<sup>35</sup> Fenk Hasan, 'National Belonging and Its Relationship with Psychological Security Among University Students', *Al-Biruni Journal of Humanities and Social Sciences*, 15 January 2026, 1, <https://doi.org/10.64440/BIRUNI/BIR0012>.

<sup>36</sup> Leheza et al., 'Interpretation of Regulatory and Legal Acts in Contemporary Contexts?'

<sup>37</sup> Handoyo Prasetyo et al., 'From Individual to Corporate Criminal Liability : An Islamic Criminal Law Analysis of Anamnesis Inaccuracy and Misdiagnosis in Telemedicine', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 13, no. 1 (April 2026): 96–111, <https://doi.org/10.29300/mzn.v13i1.9065>.

contribution to the development of national law.<sup>38</sup> While the study touches on the importance of harmonising national Law with Islamic values, it falls short of providing a detailed analysis of the political and ideological negotiations that influenced the formation of the new criminal code. The process of incorporating *fiqhiyah legal maxim* into Indonesia's KUHP involved complex political negotiations between various factions, including religious groups, secular parties, and civil society organisations. The study would benefit from a deeper engagement with how these political dynamics influenced the final text of the criminal code and the balancing act between Islamic values and secular governance.

The integration of Islamic principles in Indonesia's legal system is not without controversy, especially in a pluralistic society with diverse religious and cultural backgrounds. The analysis should address how the integration of fiqhiyah legal maxim might be viewed as either a religious accommodation or a challenge to secular governance. In particular, the implications for non-Muslim populations and the protection of their rights under the Pancasila-based framework should be further explored. In the context of Indonesia, as a country with a majority Muslim population, Islamic teachings, including fiqhiyah legal maxim, are in harmony with the legal principles contained in Law No. 1, 2023 on the Criminal Code. The detailed analysis will be presented in the following explanation:

1. *Integrating the principle of لَا جُرْمَةَ وَلَا عُقُوبَةَ إِلَّا بِالنَّصِّ with the principle of legality in Article 1 paragraph (1) and Article 2 paragraph (1) of Law No. 1, 2023*

The principle of "لَا جُرْمَةَ وَلَا عُقُوبَةَ إِلَّا بِالنَّصِّ" (*There is no crime and no punishment without a legal provision*) is in harmony with the principle of legality of Law No. 1, 2023, which is the foundation of modern criminal law. In the law No. 1, 2023, the principle of legality is expressly stipulated in Article 1 paragraph (1), which states that 'No act shall be subject to criminal sanction and/or action, except upon the strength of criminal regulations in laws and regulations that have existed before the act was committed.'<sup>39</sup> This shows that the national criminal law adopts a fundamental principle that is also found in Islamic Law, namely that there is no punishment without a clear legal basis. This principle protects individual rights from repressive and arbitrary actions by the state.

This principle is relevant in the context of criminal law reform, especially to emphasise that the law must be formulated clearly, without multiple interpretations, and applied prospectively. For example, Article 2 paragraph (1)

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<sup>38</sup> Syamsul Fatoni, 'Fungsionalisasi Nilai Islam Dan Local Wisdom Dalam Pembaruan Hukum Pidana', *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 16, no. 1 (2019): 21–40, <https://doi.org/10.21154/justicia.v16i1.1598>.

<sup>39</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, Pub. L. No. UU No. 1 Tahun 2023, Kitab Undang-Undang Hukum Pidana 1 (2023).

of the Law No. 1, 2023 states that "The provisions as referred to in article 1 paragraph (1) shall not prejudice the application of law in the community, which stipulates that a person shall be criminalised even though the act is not regulated in this law"<sup>40</sup>. In other words, this provision implies that customary Law or unwritten Law prevailing in the community can still be used as a basis for punishing a person, even though the act is not included in the existing law<sup>41</sup>.

This can be seen as an extension of the concept of the principle of legality set out in the previous provision. The national legality principle requires that an act can only be legalised if it has been clearly regulated in written law. However, with the existence of Article 2 paragraph (1), the application of the principle of legality becomes more flexible and inclusive. It recognises the existence of law, customary law, or unwritten law in enforcing criminal justice.

The integration of Islamic law values in the legality principle of Law No. 1, 2023, reflects a comprehensive vision of justice, as advocated in Sharia. Islamic law prioritises compliance with religious texts and the principle of comprehensive justice, both for perpetrators, victims, and society in general. By adopting this principle, Indonesian criminal law not only accommodates local values but also brings a religious dimension that balances individual and collective justice<sup>42</sup>.

## 2. *Integrating the principle of لا رَجْعِيَّةَ فِي التَّشْرِيعِ الجِنَائِيّ with the principle of non-retroactivity in article 1 paragraph (1) of Law No. 1, 2023 (implicitly)*

The principle of 'لا رَجْعِيَّةَ فِي التَّشْرِيعِ الجِنَائِيّ' (No retroactive application of criminal law) has an important role in ensuring justice and legal certainty in the criminal law system. In the context of Law No. 1, 2023, this principle is not explicitly mentioned in a particular article in Law No. 1, 2023, but this principle is implied in the overall construction of the law. Particularly Article 1 paragraph (1), which states 'No act shall be subject to criminal sanction and/or action, except upon the strength of criminal regulations in laws and regulations that have existed before the act was committed'<sup>43</sup>, indirectly reinforces the principle of non-retroactivity. The application of this principle avoids arbitrary criminalisation and provides protection to individuals from the possibility of applying penalties for acts that were not sanctioned at the time they were committed.

This principle is also guaranteed in Article 28I paragraph (1) of the 1945 Constitution which reads "The right to life, the right not to be tortured, the right

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<sup>40</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>41</sup> Sulhan, 'Koeksistensi Asas Legalitas Dan Asas Hukum Yang Hidup Dalam Masyarakat Dalam KUHP Baru', in *Skrripsi* (Universitas Islam Negeri Syarif Hidayatullah, 2023).

<sup>42</sup> Moh Khasan, 'Prinsip-Prinsip Keadilan Hukum Dalam Asas Legalitas Hukum Pidana Islam', *Jurnal RechtsVinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 21–36.

<sup>43</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognised as a person before the law, and the right not to be prosecuted on the basis of a retroactive law are human rights that cannot be reduced under any circumstances.<sup>44</sup> This article stipulates that the right not to be subject to punishment based on retroactive laws is a human right that cannot be reduced under any circumstances. In this case, the principle of retroactivity is expressly avoided as it may contradict the principle of justice, which states that a person cannot be punished on the basis of a law that did not exist at the time of the act.

Internationally, this principle has become standard in criminal law, although in certain cases, such as international criminal offences or extraordinary crimes, the principle of retroactivity can be applied. This is, for example, the case of genocide or crimes against humanity, which are considered to require special handling. In Indonesia, although the principle of non-retroactivity is part of Law No. 1, 2023, there are exceptions. Prof Ali Masyar Mursyid, Professor of the Faculty of Law at the State University of Semarang (Unnes), stated that the Law No. 1, 2023 also adheres to the principle of retroactivity with certain requirements as outlined in Article 1 paragraph (2) of the Criminal Code, where the application of retroactivity in this article uses the principle of *lex favourio* or the use of sanctions based on the lightest penalty, even though the act was committed before the regulation came into force. Thus, based on the principle of *lex favori*, if Law No. 1, 2023 imposes a lighter sanction on a criminal offence, then the old regulation does not apply.<sup>45</sup> This provision aims to protect the defendant from being subjected to a heavier punishment after a change to a lighter regulation.

3. *Integrating of the principle of إِنَّ التَّشْرِيعَ الْجِنَائِيَّ يَجُوزُ أَنْ يَكُونَ لَهُ أَنْتَرٌ رَجْعِيٌّ فِي حَالَةِ الْجَرَائِمِ الْخَطِيرَةِ الَّتِي تَمَسُّ الْأَمْنَ الْعَامَّ أَوْ النِّظَامَ الْعَامَّ with the principle of retroactivity (specifically as an exception) in article 3 paragraph (1) of Law No. 1, 2023*

The principle " إِنَّ التَّشْرِيعَ الْجِنَائِيَّ يَجُوزُ أَنْ يَكُونَ لَهُ أَنْتَرٌ رَجْعِيٌّ فِي حَالَةِ الْجَرَائِمِ الْخَطِيرَةِ الَّتِي تَمَسُّ الْأَمْنَ الْعَامَّ أَوْ النِّظَامَ الْعَامَّ " (*Criminal Law may be applied retroactively in cases of serious crimes that threaten security or public order*) indicates that, in some very urgent circumstances, retroactive application of the law may be justified. This is very relevant to the development of modern criminal law, which considers the principles of justice and the need to respond to crimes that can threaten society as a whole.

<sup>44</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>45</sup> Mochamad Januar Rizki, 'Mengulas Penerapan Asas Retroaktif Dalam KUHP Nasional', Hukumonline, 2024, 1–2, <https://www.hukumonline.com/berita/a/mengulas-penerapan-asas-retroaktif-dalam-kuhp-nasional-lt662338187d5c8/?page=1>.

The application of the principle of retroactivity can be understood as an attempt to balance the interests of individuals and public order. This principle aims to protect individuals from the potential arbitrariness of the authorities while maintaining public order more broadly. Thus, the application of the principle of retroactivity is not only oriented towards formal legal aspects, but also refers to the principle of *maslahat*, which must be upheld for the common good<sup>46</sup>.

In the context of Indonesian Law, the integration of this principle is reflected in Article 3 paragraph (1) of the Law No. 1, 2023, which provides an exception to the principle of non-retroactivity. Article 3, paragraph (1) of the new KUHP provides that if there is a change in legislation after the occurrence of a criminal offence, the law that is more favourable to the defendant will be applied.<sup>47</sup> While this appears to support the principle of non-retroactivity, there are exceptions in certain cases, such as cases of terrorism or extraordinary crimes, where a more severe or retroactive law may be applied to protect the order and security of the state. These exceptions are in line with *fiqh* principles that allow retroactive application of criminal law, especially in cases that threaten public security and order.

This principle is also in line with the development of international law, especially in the handling of extraordinary crimes such as terrorism, crimes against humanity, and war crimes. In many countries, including Indonesia, the application of retroactive law in these cases is considered a necessary step to maintain national security and social stability. Nonetheless, the application of retroactive law must still be done carefully to ensure that the principle of justice is maintained. The decision to apply criminal law retroactively should be made taking into account that while security and public order are priorities, human rights and the principle of law must also be protected.<sup>48</sup>

4. *Integrating the principle of إِنَّ التَّشْرِيْعَ الْجِنَائِيَّ يَجِبُ أَنْ يَكُوْنَ لَهُ أَثَرٌ رَجْعِيٌّ كُلَّمَا كَانَ ذَلِكَ فِي مَصْلَحَةِ الْجَانِي* with the principle of retroactivity (specifically) in article 3 paragraph (1) of Law No. 1, 2023

The principle "إِنَّ التَّشْرِيْعَ الْجِنَائِيَّ يَجِبُ أَنْ يَكُوْنَ لَهُ أَثَرٌ رَجْعِيٌّ كُلَّمَا كَانَ ذَلِكَ فِي مَصْلَحَةِ الْجَانِي" (*Criminal Law may be applied retroactively if it is for the good of the accused*) is a principle that allows criminal law to be applied retroactively if it is favourable to the accused or provides benefits for justice. This principle implies that if there is a

<sup>46</sup> Z. Zamzami, 'Problematika Penerapan Asas Retroaktif Dalam Hukum Pidana Islam', *Tasyri': Jurnal Muamalah Dan Ekonomi Syariah* 2, no. 1 (2020): 71–83.

<sup>47</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>48</sup> Fitri Ramadani, St Halimang, and Chaerul Risal, 'Penerapan Asas Retroaktif Dalam Pelanggaran Hak Asasi Manusia', *Siyasatuna: Jurnal Ilmiah Mahasiswa Syiyasab Syariyyah* 5, no. 3 (2024): 705–17.

change in the criminal law regulations that are more lenient after the criminal act is committed, then the regulations that are more favourable to the defendant can be applied, even though the act occurred before the new regulations were enacted.

This principle is in line with the principle in Article 3 paragraph (1) of Law No. 1, 2023, which states, 'If there is a change in legislation after the act has been committed, the most favourable provision for the defendant shall apply.'<sup>49</sup> This article explicitly provides an opportunity for the defendant to obtain more favourable legal provisions if there is a change in the law after the criminal act is committed. This reflects the application of the principle, where the application of a more lenient law after a change in the law can be applied to the defendant as part of an effort to provide protection for human rights and the principle of justice<sup>50</sup>.

Therefore, if there is a change in the law that provides leniency or reduces the sentence for the accused, then the provision applies retroactively, in accordance with the principles contained in this principle. Therefore, this principle supports the creation of justice that is more in favor of the accused in certain cases, even though the act occurred before the change in the legal principles came into effect.

5. *Integrating of the principle of إِنَّ الشَّرِيعَةَ الْإِسْلَامِيَّةَ تُطَبَّقُ عَلَى كُلِّ جَرِيمَةٍ تُرْتَكَبُ فِي أَيِّ مَكَانٍ سِوَاءَ كَانَ مُرْتَكِبُ الْجَرِيمَةِ مُسْلِمًا أَوْ ذِمِّيًّا أَوْ مُسْتَأْمِنًا with the legal principles in Article 5 and Article 8 paragraph (1) of Law No. 1, 2023*

The principle " إِنَّ الشَّرِيعَةَ الْإِسْلَامِيَّةَ تُطَبَّقُ عَلَى كُلِّ جَرِيمَةٍ تُرْتَكَبُ فِي أَيِّ مَكَانٍ سِوَاءَ كَانَ مُرْتَكِبُ الْجَرِيمَةِ " (Indeed, Islamic Law applies to every crime committed anywhere, regardless of the status of the perpetrator, whether he is a Muslim, *dzimmi* (non-Muslims living under the protection of the Islamic government), or *musta'min* (non-Muslims who are given temporary security within Islamic territory)) are in line with the articles in Law No. 1, 2023 on the Criminal Code. This principle reflects the principle of universality of Islamic Law that applies to anyone, regardless of the religious status or nationality of the perpetrator of a criminal offence.

In the context of Law No. 1, 2023, this principle is reflected in the principle of protection or passive national principle as contained in Article 5. This article regulates the application of Indonesian criminal law to anyone who commits a criminal offense that threatens Indonesia's national interests, both at home and

<sup>49</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>50</sup> Mahlil and Moch Din, 'Asas Retroaktif Dalam Perspektif Hukum Pidana Positif Indonesia Dan Hukum Pidana Islam', *Jurnal Ilmiah Mahasiswa Bidang Hukum Pidana Fakultas Hukum Universitas Syiah Kuala* Vol. 2, no. No. 4 (2018): 773–79.

abroad, regardless of the nationality of the perpetrator<sup>51</sup>. Furthermore, the application of this principle is also in line with the active national principle stipulated in Article 8, paragraph (1) of Law No. 1, 2023. This article emphasises that Indonesian citizens (WNI) who commit criminal offenses outside the territory of Indonesia can still be held criminally responsible in accordance with national law.<sup>52</sup> This implements the concept of universal responsibility for criminal acts, as emphasised in the fiqh principle that criminal acts do not recognise geographical boundaries when it comes to legal protection<sup>53</sup>.

In the formation of these principles, this fiqhiyyah principle serves as a normative foundation that bridges sharia values with the principles of modern criminal law. This shows that Law No. 1, 2023 not only seeks to maintain the integrity of national law but also ensures integration with the universal values of Islamic Law. Thus, the integration of this principle in the articles of the Law No. 1, 2023 reflects an effort to harmonise Indonesian criminal law with inclusive values of justice.

6. *Integrating the principle of الْحُدُودُ تَسْقُطُ بِالشُّبُهَاتِ with the principle of clarity of criminal offences in Article 3 paragraphs (2), (3), (4) of Law No. 1, 2023*

The principle الْحُدُودُ تَسْقُطُ بِالشُّبُهَاتِ (*Hadd punishment does not apply where there is doubt or doubt*) is in harmony with the articles in Law No. 1, 2023. This principle teaches that if there is any doubt about the guilt or culpability of a person, then the hadd punishment imposed on that person should be suspended. In Islamic Law, this principle serves to protect individuals from the application of unfair punishment on the basis of speculation or doubt. The application of this principle in the context of Indonesian criminal law requires the application of the precautionary principle, especially in cases involving serious crimes or criminal offenses that may pose a high risk to a person's liberty.

In Law No. 1, 2023, a similar principle can be found in several articles that emphasise the use of the principle of *in dubio pro reo* (in doubt, in favor of the accused). Article 3 paragraphs (2), (3), (4) of the Law No. 1, 2023, for example, talks about the "principle of criminal clarity", which states that a person can only be punished for acts that have been clearly written and can be proven with a strong conviction.<sup>54</sup> This article accommodates the principle of الْحُدُودُ تَسْقُطُ

<sup>51</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>52</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>53</sup> Ni Putu Ari Setyaningsih, 'Penerapan Asas Nasionalitas Aktif Terhadap Tindak Pidana Pencucian Uang', *Jurnal Aktual Justice* 4, no. 2 (2019): 127–46, <https://doi.org/10.47329/aktualjustice.v4i2.544>.

<sup>54</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

بِالشُّبُهَاتِ by emphasising that in any judicial process, if there is any doubt in proving the elements of the crime, then the doubt should be in favor of the defendant, and a severe punishment should not be imposed<sup>55</sup>. Ultimately, this principle reinforces the principle that criminal law is more focused on protecting human rights and reducing the risk of injustice that can arise from the application of the law based on doubt or uncertainty.

7. *Integrating the principle of لَا يَجُوزُ اثْبَاتُ الْحُقُوقِ الشَّرْعِيَّةِ بِالْقِيَاسِ إِذَا كَانَتْ مُحَدَّدَةً بِالنَّصِّ with the principle of prohibition of analogy in criminal law contained in Article 3 paragraph (1), Article 492 of Law No. 1, 2023*

The principle لَا يَجُوزُ اثْبَاتُ الْحُقُوقِ الشَّرْعِيَّةِ بِالْقِيَاسِ إِذَا كَانَتْ مُحَدَّدَةً بِالنَّصِّ (*It is not permissible to establish shar'i rights by qiyas if they are clearly determined in the nash*). This principle emphasises that if a right or obligation in Sharia law has been clearly determined by the nash (legal text), then it should not be changed or interpreted further by using qiyas (analogy). This principle serves to keep the absolute or definite law from being shifted by an analogical approach that could lead to distortion or changes in the substance of the law that has been explicitly stipulated in religious texts.

In the formation of Law No. 1, 2023, this principle is in line with legal principles that expressly regulate the types of criminal offences and penalties that cannot be changed by an analogical approach. Article 1, paragraph (2) of Law No. 1, 2023 stipulates that 'In determining the existence of a criminal offence, analogy is prohibited.'<sup>56</sup> This shows that to determine an act as an unlawful act, it must be based on the written provisions explicitly stated in the law. Interpretation of the Law should not be done by expanding the meaning or reaching things that are not expressly regulated in the law, especially if it aims to expand the scope of application of the legal principles<sup>57</sup>. Thus, criminal law must be understood and applied in accordance with clear provisions without broad or analogical interpretations that go beyond the limits that have been determined.

Furthermore, in a more specific legal context, such as in the regulation of certain criminal offences, this principle is also reflected in articles that state the types of criminal offences that have been specifically determined, for example in Article 492 of the Law No. 1, 2023 regarding fraud, which reads '*Every person who, with the intention of unlawfully benefiting himself or another by using a false name or false position, using deception or a series of false words, moves someone to give up a good, give a debt,*

<sup>55</sup>Jika Hakim Ragu, 'Asas In Dubio Pro Reo Jawabannya', 2024, 1, <https://www.hukumonline.com/berita/a/jika-hakim-ragu--asas-iin-dubio-pro-reo-i-jawabannya-lt581212a18dce4/>.

<sup>56</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>57</sup> Tongat, 'Rekonstruksi Politik Hukum Pidana Nasional (Telaah Kritis Larangan Analogi Dalam Hukum Pidana)', *Jurnal Konstitusi* 12, no. 3 (2015): 524–41.

*make a debt acknowledgement, or write off a debt, shall be punished for fraud, with a maximum imprisonment of 4 (four) years or a maximum fine of category V."*<sup>58</sup>.

In this article, the criminal offence of fraud has been regulated clearly and in detail, so it cannot be added by interpretation or new development through qiyas. The criminal law that has been established in the nash or the applicable text remains binding and cannot be redefined by analogy, which has the potential to increase or decrease the existing legal provisions. The application of this principle avoids legal uncertainty and ensures justice for all parties involved in the legal process.

8. *Integrating the principle of الْعُقُوبَاتُ تَدْوُرُ مَعَ الْجَرَائِمِ وَجُودًا وَعَدَمًا with the principle of no punishment without fault and the principle of proportionality in Article 1 paragraph (1), Article 36 paragraphs (1) and (2), Article 37, Article 38 and Article 39 of Law No. 1, 2023*

The principle الْعُقُوبَاتُ تَدْوُرُ مَعَ الْجَرَائِمِ وَجُودًا وَعَدَمًا (*Punishment revolves around the existence or non-existence of a crime*) illustrates the principle that punishment only applies if there is an unlawful act. In other words, there is no punishment without a clear and proven criminal offence. This principle confirms that the imposition of criminal sanctions must always be related to actions that are considered violations of the law. There can be no punishment given without the existence of the unlawful act.

In the context of the formation of Law No. 1, 2023, this principle is in line with and reflected in the articles that regulate criminal offences and penalties that are directly related to the acts committed. For example, Article 1 paragraph (1) of the Law No. 1, 2023 regulates the affirmation of the principle of legality in criminal law, which states that a person can only be punished if the act has been regulated as a criminal offence in the applicable law at the time the act is committed<sup>59</sup>. Thus, punishment in Indonesian criminal law may not be applied to acts that are not regulated, or there is no element of criminal offence in an act.

In addition, Article 36 of the Law No. 1, 2023 also explains the principle of criminal responsibility based on fault (*schuld*), namely actions committed intentionally (*dolus*) or due to negligence (*culpa*). Paragraph (1) emphasises that a person can only be held criminally responsible if his/her actions fulfil the elements of intentionally or negligently. Paragraph (2) clarifies that criminal offences that can be punished are basically those committed intentionally, while acts due to negligence can only be punished if explicitly regulated in the

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<sup>58</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>59</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

legislation<sup>60</sup>. This principle aims to maintain fairness in the application of criminal law, so that only acts that are accompanied by real fault can be sanctioned. The article also distinguishes between intentional acts, which include the intention of the perpetrator to achieve a certain result, and negligent acts, which occur due to a lack of caution or neglect of certain obligations. Thus, this article promotes the principle of *nullum crimen sine culpa* (No punishment without fault) in the national criminal law system.

In addition, this principle is also in line with Articles 37, 38 and 39 of Law No. 1, 2023, which regulate criminal liability by taking into account certain conditions related to the elements of guilt and the circumstances of the perpetrator. Article 37 introduces exceptions to the principle of fault, whereby a person may be convicted even in the absence of fault (strict liability), or held responsible for the actions of another (vicarious liability), to the extent provided for by law. Article 38 provides that offenders with mental or intellectual disabilities may be subject to reduced sentences or alternative measures as a form of respect for their special circumstances. Article 39 further confirms that offenders with mental disabilities in an acute state, or with severe intellectual disabilities, cannot be sentenced, but are only subject to certain measures.<sup>61</sup> These three articles reflect the Law No. 1, 2023's attempt to accommodate the principle of justice by considering the subjective condition of the offender and certain exceptions to the principle of criminal responsibility based on guilt.

The following table shows the integration of fiqhiyyah legal maxim with legal principles in Law No. 1, 2023:

Table 2. Integrating the Fiqhiyyah legal maxim in Law No. 1, 2023

No	Fiqhiyyah legal maxim	Articles in the Law No. 1, 2023
1	لَا جُرْمَةَ وَلَا عُقُوبَةَ إِلَّا بِالنَّصِّ	<ol style="list-style-type: none"> <li>Article 1 paragraph (1) 'No act shall be subject to criminal sanctions and/or measures, except on the strength of criminal provisions in laws and regulations that have existed before the act was committed.'</li> <li>Article 2 paragraph (1) 'The provisions referred to in Article 1 paragraph (1) shall not prejudice the applicability of the law living in the community which determines that a person should be punished even though the act is not regulated in this Law.'</li> </ol>

<sup>60</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana.

<sup>61</sup> Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana, 15.

2	لَا رَجْعِيَّةَ فِي التَّشْرِيعِ الْجِنَائِيِّ	Article 1 paragraph (1) (by implication) 'No act shall be subject to criminal sanctions and/or measures, except on the strength of criminal provisions in laws and regulations that have existed before the act was committed.'
3	إِنَّ التَّشْرِيعَ الْجِنَائِيَّ يَجُوزُ أَنْ يَكُونَ لَهُ أَنْتَرُ رَجْعِيٌّ فِي حَالَةِ الْمَجْرِمَاتِ الْخَطِيرَةِ الَّتِي تَمَسُّ الْأَمْنَ الْعَامَّ أَوْ النِّظَامَ الْعَامَّ	1. Article 1 paragraph (2) 'In determining the existence of a criminal offence, analogies shall not be used.' 2. Article 3 paragraph (1) 'In the event of a change in legislation after the offence has been committed, the new legislation shall apply, unless the provisions of the old legislation are favourable to the perpetrators and accomplices of the offence.'
4	إِنَّ التَّشْرِيعَ الْجِنَائِيَّ يَجِبُ أَنْ يَكُونَ لَهُ أَنْتَرُ رَجْعِيٌّ كُلَّمَا سَاحَانَ ذَلِكَ فِي مَصْلَحَةِ الْجَانِي	Article 3 paragraph (1) 'In the event that there is a change in legislation after the offence has been committed, the new legislation shall apply, unless the provisions of the old legislation are favourable to the perpetrators and accomplices of the offence.'
5	إِنَّ الشَّرِيعَةَ الْإِسْلَامِيَّةَ تُطَبَّقُ عَلَى كُلِّ جَرِيمَةٍ تُرْتَكَبُ فِي أَيِّ مَكَانٍ سِوَاهُ كَانَ مُرْتَكِبُ الْجَرِيمَةِ مُسْلِمًا أَوْ ذِمِّيًّا أَوْ مُشْتَأَمًا	1. Article 5 'The criminal provisions in the Act shall apply to any person outside the territory of the Unitary State of the Republic of Indonesia who commits a criminal offence against the interests of the Unitary State of the Republic of Indonesia relating to: a. state security or the process of constitutional life; b. the dignity of the President, Vice President, and/or Indonesian officials abroad; c. currency, seals, state stamps, seals, or securities issued by the Government of Indonesia, or credit cards issued by Indonesian banks; d. the economy, trade, and banking of Indonesia; e. the safety or security of shipping and aviation; f. the safety or security of buildings, equipment, and national or state assets of Indonesia; g. the safety or security of electronic communication systems; h. the national interests of Indonesia; d. the economy, trade, and banking of Indonesia. Indonesian economy, trade, and banking; e. safety or security of shipping and aviation; f. safety or security of Indonesian buildings, equipment, and national or state assets; g. safety or security of electronic communication systems; h. Indonesia's national interests as stipulated in the law; or i. Indonesian citizens, based on international agreements with the country where the Criminal Offence occurred.' 2. Article 8, paragraph (1) 'The criminal provisions in the Act shall apply to any Indonesian citizen who commits a Criminal Offence outside the territory of the Unitary State of the Republic of Indonesia.'

6	الْحُدُودُ تَسْقُطُ بِالشُّبُهَاتِ	Article 3 paragraph (2) 'In the event that the act that has occurred no longer constitutes a Criminal Offence according to the new legislation, the legal proceedings against the suspect or defendant shall be terminated for the sake of law.', paragraph (3) 'In the event that the provisions referred to in paragraph (2) are applied to a suspect or defendant who is in detention, the suspect or defendant shall be released by the Authorised Officer in accordance with the level of examination.', and paragraph (4) 'In the event that after the verdict of conviction is legally binding and the act that has occurred no longer constitutes a Criminal Offence according to the new legislation, the execution of the verdict of conviction shall be abolished.
7	لَا يَجُوزُ اثْبَاتُ الْحُقُوقِ الشَّرْعِيَّةِ بِالْقِيَاسِ إِذَا كَانَتْ مُحَدَّدَةً بِالنَّصِّ	<ol style="list-style-type: none"> <li>Article 3 paragraph (1) 'In the event of a change in legislation after the offence has been committed, the new legislation shall apply, unless the provisions of the old legislation are favourable to the perpetrators and accomplices of the offence.'</li> <li>Article 492 'Any person who with intent to unlawfully benefit himself or another by using a false name or false position, by deceit or a series of false words, induces a person to deliver a good, to give a debt, to make an acknowledgement of debt, or to cancel a debt, shall, being guilty of fraud, be punished by a maximum imprisonment of 4 (four) years or a maximum fine of category V.'</li> </ol>
8	الْعُقُوبَاتُ تَدْوَرُ مَعَ الْجَزَائِمِ وَحُدُودًا وَعَدَمًا	<ol style="list-style-type: none"> <li>Article 1 paragraph (1) 'No act shall be subject to criminal sanctions and/or measures, except on the strength of criminal provisions in laws and regulations that have existed before the act was committed.'</li> <li>Article 36 paragraph (1) 'Every person can only be held accountable for Criminal Acts committed intentionally or due to negligence.', and paragraph (2) 'Punishable acts are Criminal Acts committed intentionally, while Criminal Acts committed due to negligence can be punished if expressly provided for in the laws and regulations'.</li> <li>Article 37 'Where provided by law, any person may: a. be punished solely for the fulfilment of the elements of a criminal offence without regard to the existence of guilt; or b. be held liable for a criminal offence committed by another person.'</li> <li>Article 38 'Any person who at the time of committing a Criminal Offence has a mental disability and/or intellectual disability may have his/her punishment reduced and/or be subjected to measures.'</li> </ol>

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5. Article 39 'Any person who at the time of committing a criminal offence has a mental disability which is in a state of acute relapse and accompanied by psychotic symptoms and/or intellectual disability of moderate or severe degree may not be sentenced, but may be subject to measures.
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From the table, it can be seen how Islamic Law, in this case, the fiqhiyah legal maxim are in harmony with the legal principles in the various articles that make up Law No. 1, 2023.

### **Integration of *Fiqhiyah Legal Maxim* into Indonesia's National Criminal Code: A Critical and Theoretical Analysis**

The integration of *fiqhiyah legal maxim* into Indonesia's new Criminal Code (KUHP) represents a significant attempt to reconcile Islamic legal values with the nation's legal system. While this process is framed as a harmonisation of Islamic Law with national law, a deeper examination reveals that it involves complex interactions between normative legal maxims, practical challenges, and political compromises. The study has made important strides in mapping these legal correspondences, but a more critical exploration of their implications is necessary to understand how these principles operate in both legal practice and the socio-political landscape of Indonesia.

The study successfully identifies the theoretical correspondence between fiqh maxims and criminal law principles such as legality, non-retroactivity, and the principle of public order. However, these theoretical connections do not fully address the practical implementation of *fiqh* principles in a pluralistic legal environment. Indonesia, as a multi-religious society with significant cultural diversity, faces particular challenges in ensuring that the integration of Islamic legal values does not conflict with the legal rights of non-Muslim citizens or undermine the secular foundations of the legal system. While the study briefly touches on the importance of legal certainty and the principle of legality (*la jarima wa la 'uqubah illa bi al-nass*), the implications of applying these principles to non-Muslim offenders or multicultural contexts remain underexplored.

Indonesia's legal framework is grounded in pluralism, where religious, customary, and secular laws coexist. The application of Islamic legal principles, especially in criminal law, may create tensions when these laws affect non-Muslim individuals or intersect with local customs that are not aligned with Islamic values. This creates the potential for legal inconsistency, particularly when it comes to interpreting and enforcing these Islamic principles in judicial practice. There is also the challenge of ensuring that these Islamic legal maxims are applied uniformly across the country, taking into account the diversity of the Indonesian population. Judicial officers, most of whom are trained within a secular legal

tradition, will need clear guidance on how to apply *fiqh* principles without introducing bias or creating legal discrepancies between different ethnic and religious groups.

The study would benefit from a broader engagement with how legal practitioners, judges, and law enforcement agencies foresee the practical application of these principles. In examining the integration of *fiqhiyyah legal maxim* into the KUHP, the study overlooks the complex legislative process that played a pivotal role in this reform. The integration of Islamic Law into Indonesia's positive legal framework was not merely a technical exercise but also a political negotiation involving multiple stakeholders, including religious groups, secular parties, and civil society organisations. The formation of the KUHP was influenced by political considerations aimed at balancing religious values with the secular nature of Indonesia's legal system. This process involved substantial negotiation and compromise, with various factions having differing perspectives on the role of Islamic Law in the criminal justice system.

While the study identifies the importance of Islamic values in shaping the legal landscape, it fails to engage with the political dynamics and debates that shaped the integration of *fiqh* principles into the Criminal Code. The study does not sufficiently address how these principles were debated and adjusted during the drafting of the law, nor does it explore the political negotiations that influenced the outcome. The inclusion of Islamic Law in the KUHP was likely subject to contestation and trade-offs between Muslim and non-Muslim legislators, as well as between conservative and progressive factions within the Muslim community. An exploration of these political and ideological dynamics would enrich the study by providing a more comprehensive understanding of how Islamic Law was integrated in a way that both accommodated religious aspirations and protected national unity.

Moreover, the political implications of integrating Islamic legal principles into a secular legal system require further exploration. The study does not address the political consequences of such an integration for Indonesia's secular governance model. For instance, the implementation of Islamic legal maxims might be viewed by some groups as a step towards Islamization, potentially raising concerns about the preservation of pluralism and the human rights of non-Muslim communities. It is critical to explore how secular legal institutions will reconcile Islamic Law with the constitutional commitment to pluralism, which guarantees equality before the law for all citizens, regardless of religious affiliation.

The concept of harmonisation is central to the study, yet its theoretical underpinnings remain underdeveloped. Harmonisation, as applied in this context, is portrayed as the integration of Islamic legal principles into Indonesia's national law, but the study does not clarify whether this harmonisation refers to

the adoption, adaptation, or legitimisation of fiqh principles. These three approaches to harmonisation have very different legal, political, and social consequences. If harmonisation is viewed as an adoption of fiqh principles into the national legal system, this raises significant questions about the compatibility of Islamic Law with Indonesia's secular constitution, especially with respect to equality and freedom of religion. The adoption of Islamic principles wholesale could result in discrimination against non-Muslims and marginalised groups. If harmonisation is seen as an adaptation, then the study must address how these principles are modified to fit the existing legal framework without threatening Indonesia's commitment to secularism and pluralism. Finally, if harmonisation is seen as legitimisation, it could be a symbolic gesture aimed at appeasing religious constituencies without making substantive changes to the law. This raises important questions about whether Islamic values will be substantively incorporated into the legal system, or whether the integration is simply for political legitimacy. Each of these approaches to harmonisation has profound legal and political implications. The study should clarify whether the integration of fiqh principles represents genuine legal reform or whether it is simply a way to symbolically legitimise Islamic Law without truly transforming the national legal system. The study should also engage with the potential political risks of such symbolic integration, especially in the context of Indonesia's diverse and multi-religious society.

The integration of fiqhiyyah legal maxim into Indonesia's newly enacted Criminal Code (KUHP) No. 1, 2023 has highlighted the dynamic relationship between Islamic legal principles and positive national law. Despite Indonesia not being a formal Islamic state, Islamic jurisprudence, particularly *fiqhiyyah*, has played a pivotal role in shaping Indonesia's legal framework, as explored in your research. This integration underscores the importance of harmonising national Law with Islamic values, a theme that is also explored in a number of key studies in recent literature. For instance, a research that examines how the death penalty is positioned within both Indonesian criminal Law and Islamic Law. Tongat highlights the conflict and convergence between secular Law and Islamic principles concerning the death penalty, emphasising how Islamic views on punishment influence Indonesia's legal treatment of severe crimes. This resonates with this research, which also investigates the interaction between Islamic legal maxims and modern national criminal law, although your study is broader, focusing on *fiqhiyyah legal maxims* in relation to various criminal code provisions, such as the principle of legality and non-retroactivity.<sup>62</sup> Similarly, research explores how living law (including *urf* or customary law) influences the

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<sup>62</sup> Tongat, Tongat, "Death Penalty in Indonesia: Between Criminal Law and Islamic Law Perspectives". *Legality : Jurnal Ilmiah Hukum*, 32 no. 1 (2024):90-104. <https://doi.org/10.22219/ljih.v32i1.32335>.

development of the criminal code. Their work suggests that while Islamic law principles shape legal norms, *urf* also plays a significant role, particularly in aligning local legal practices with national standards. This aligns with these findings on the integration of *fiqhiyyah legal maxim*, as both studies acknowledge the pluralistic nature of Indonesia's legal system and the challenges of incorporating Islamic Law into secular criminal legislation. However, this research specifically focuses on *fiqhiyyah* maxims, such as *la jarima wa la 'uqubah illa bi nas* (no punishment without legal text), which aligns with legal principles of legality in Articles 1(1) and 2(1) of the new KUHP, while Asmawi et al. focus more on *urf* and living law.<sup>63</sup>

Additionally, a study about the integration of customary Law, Islamic Law, and national law in the Toraja region of Indonesia explores how local customary practices interact with national law, facilitated by Islamic principles in a pluralistic legal system. This study mirrors this research in its exploration of pluralism in Indonesian Law and how Islamic principles contribute to shaping the national criminal code. However, while this research emphasises the theoretical integration of *fiqhiyyah legal maxim*, Haq et al. focus on the practical application of these principles at the local level, particularly in the context of Toraja's customary law.<sup>64</sup> In comparison with research that examines the Indonesian pretrial system and critiques its formalism, this research argues for a more substantial judicial review in line with human rights and Islamic values. It suggests improvements in *praperadilan* procedures to ensure better protection of individual rights within the framework of Islamic Law.<sup>65</sup> On the other hand, this research emphasises the integration of *fiqhiyyah* (Islamic legal maxims) principles into the new KUHP, illustrating how these principles, such as the principle of legality and non-retroactivity, align with the criminal code's core provisions. Both articles highlight the influence of Islamic jurisprudence in shaping Indonesian Law. Both underscore the importance of harmonising national Law with Islamic principles, yet the first advocates for procedural changes, while the second offers a framework for substantive legal alignment.

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<sup>63</sup> Asmawi, Asmawi, Ahmad Fudhaili, Abdurrahman Dahlan, Nur Rohim Yunus, and Azizah, "Living Law in Indonesia's New Criminal Code: Legal Controversies and its Relevance with the Urf," *JURNAL HUKUM ISLAM*, 23 no. 2 (2025) :581-610 <https://doi.org/10.28918/jhi.v23i2.07>

<sup>64</sup> Islamul Haq, Resi Resi, Muhammad Suaib Tahir, Qurrah A'yuniyyah, and Muh. Akram J Said, "Legal Harmony: Integration of Customary, National, and Islamic Criminal Law in the Toraja Ma'rambu Langi," *Al-Ihkam: Jurnal Hukum & Pranata Sosial*, 20 no.2 (2025): 559-587. <https://doi.org/10.19105/al-lhkam.v20i2.17680>

<sup>65</sup> Arista Candra Irawati and Eugenia Brandao da Silva, "Beyond Formality in Indonesian Pretrial Law: KUHAP Reform, Human Rights, and Islamic Law". *Al-Abkam*, 35 no.2 (2005):261-86. <https://doi.org/10.21580/ahkam.2025.35.2.28399>.

This research emphasises how principles like legality and non-retroactivity are aligned with classical Islamic legal concepts, thus ensuring that the criminal code reflects both Islamic jurisprudence and modern legal standards. In contrast, a research examines the implications of the new KUHP on indigenous peoples' rights, focusing on the recognition and protection of these rights within the national legal system. While both articles assess the reform of the KUHP, this article emphasises the integration of Islamic legal maxims into substantive criminal law, while the previous article deals with the challenges and limitations faced by indigenous communities in securing their rights under the newly enacted code.

In contrast, this study critiques the feasibility of restorative justice in tackling corruption in Indonesia, focusing on whether this model could work in corruption cases, a crime often deemed too complex for restorative approaches. The article argues that despite restorative justice's potential to repair the harm caused by criminal actions, it faces significant hurdles in corruption cases due to structural and procedural limitations in Indonesia's legal system.<sup>66</sup> Meanwhile, a study focuses on legal research methodology, exploring the origins and evolution of normative legal research in Indonesia, which differs from the other articles by focusing on methodological frameworks. This research emphasises the importance of doctrinal approaches in understanding Indonesian Law, compared to the broader discussions of practical legal applications.<sup>67</sup> An article addresses the collaboration between ASEAN countries in combating digital corruption, emphasising the international efforts in asset recovery. The article underscores the importance of global cooperation for transnational issues like corruption, which contrasts with the domestic focus of the other articles on national legal reforms and justice models.<sup>68</sup> A study provides an analysis of judicial review in Malaysia, comparing how courts interpret laws and uphold constitutional boundaries. It also highlights how the judicial system acts as a check on legislative and executive powers, similar to the constitutional principles referenced in

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<sup>66</sup> Orin Gusta Andini, Nilasari Nilasari, and Andreas Avelino Eurian, "Restorative Justice in Indonesia Corruption Crime: A Utopia". *Legality : Jurnal Ilmiah Hukum*, 31 no.1 (2023):72-90. <https://doi.org/10.22219/ljih.v31i1.24247>.

<sup>67</sup> Tunggul Ansari Setia Negara, "Normative Legal Research in Indonesia: Its Originis and Approaches". *Audito Comparative Law Journal (ACLJ)*, 4 no. 1 (2023):1-9. <https://doi.org/10.22219/acj.v4i1.24855>.

<sup>68</sup> Arifin Ridwan, Sigit Riyanto, and Akbar Kurnia Putra, "Collaborative Efforts in ASEAN for Global Asset Recovery Frameworks to Combat Corruption in the Digital Era". *Legality : Jurnal Ilmiah Hukum*, 31 no.2 (2023):329-43. <https://doi.org/10.22219/ljih.v31i2.29381>.

Integrating *Fiqhiyah legal maxim*, but with a distinct focus on jurisprudential practices within Malaysia.<sup>69</sup>

The study offers distinct yet complementary perspectives on the relationship between legal principles and law enforcement in Indonesia. This study focuses on the integration of Islamic legal maxims (fiqhiyah legal maxims) with modern legal frameworks, emphasising the alignment of principles such as legality and non-retroactivity with the Indonesian Criminal Code (KUHP). In contrast, a study advocates for the normative harmonisation of Islamic jurisprudence and national law. In contrast, a study examines how sociological factors such as power imbalances and cultural norms influence the practical implementation of laws, arguing that despite well-structured legal principles, ineffective law enforcement often results from these societal dynamics.<sup>70</sup>

## Conclusion

The findings of this study demonstrate that fiqhiyyah legal maxims are substantively integrated into the foundational legal principles underlying Law No. 1, 2023 on Indonesia's Criminal Code. These maxims function not merely as doctrinal references but as normative frameworks that reinforce the formulation of key principles of positive law, including legality, non-retroactivity, and the prohibition of analogy. Core maxims such as *la jarimah wa la 'uqubah illa bi al-nass* (no crime and punishment without prior legal provision) and *al-'uqubat taduru ma'a al-jara'im* (punishment is proportionate to the crime) are reflected in provisions that safeguard legal certainty, protect the rights of the accused, and ensure proportional justice. Their alignment with Articles 1(1) and 3(1) further confirms that the KUHP embodies not only formal legality but also prudential considerations and the protection of individual rights within the criminal justice system. Overall, the integration of fiqhiyyah legal maxims into the KUHP contributes to a more comprehensive and value-based legal system that harmonises positive Law with Islamic legal reasoning. This integration strengthens the orientation of Indonesian criminal law toward substantive justice, human rights protection, and contextual responsiveness within a pluralistic society. However, this study is limited to normative analysis and has not yet explored the practical implementation of these principles in judicial practice. Therefore, future research is recommended to adopt empirical or socio-legal

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<sup>69</sup> Abdul Aziz, Norazlina, Mazlina Mohamad Mangsor, Nur Ezan Rahmat, Mastika Nasrun, and Rosa Ristawati, "An Overview of Judicial Review in The Malaysian Court." *International Journal of Academic Research in Business and Social Sciences*, 13 no. 1 (2023): 336–352. <https://doi.org/10.6007/IJARBS/v13-i1/16182>

<sup>70</sup> Burhanuddin, Burhanuddin, Wahyuniar Wahyuniar, and Maskawati Maskawati, "Law Enforcement in the Perspective of Legal Sociology." *International Journal of Sociology and Law*, 1 no. 3 (2024): 243–252. <https://doi.org/10.62951/ijsl.v1i3.286>

approaches to assess how fiqhiyyah maxims are interpreted and applied by law enforcement agencies and courts. Further studies may also explore comparative perspectives or examine the dynamic interaction between Islamic legal values and other legal traditions to enrich the development of a more adaptive and inclusive national legal framework.

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### **Author Contributions Statement**

Ahmad Agus Ramdlany conceptualised the study, designed the research framework, and led the manuscript drafting. Ahmad Musadad contributed to data collection and conducted the primary legal and literature analysis. Hammis Syafaq supported the methodological design and performed data validation through source triangulation. Maher Ali Ahmad Al-Khaldi contributed to the critical review of Islamic legal sources and strengthened the theoretical framework. Saleem Asouli was responsible for editing, language refinement, and final manuscript review to ensure clarity, coherence, and academic rigor. All authors have read and approved the final version of the manuscript.

### **AI Usage Statement**

The authors used Artificial Intelligence (AI) tools solely for language editing, grammar checking, and improving clarity. AI was not involved in developing research ideas, formulating questions, or conducting legal analysis. The authors remain fully responsible for the originality, accuracy, and integrity of the manuscript. In line with academic ethics, AI tools are not recognised as authors or contributors.

### **Conflict of Interest**

The authors state that there is no conflict of interest related to the research and publication of this article. The study was carried out objectively without any external influence that could affect the results.

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